

GREAT LAKES LEGACY ACT PROJECT AGREEMENT  
BETWEEN  
THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,  
THE BUFFALO NIAGARA RIVERKEEPER AND HONEYWELL  
FOR  
SEDIMENT REMEDIATION AND HABITAT RESTORATION  
OF  
THE BUFFALO RIVER AOC

The United States Environmental Protection Agency (U.S. EPA), represented by the Great Lakes National Program Office (GLNPO), the Buffalo Niagara Riverkeeper (Riverkeeper), and Honeywell International Inc. (the Non-Federal Sponsors), are entering into this Project Agreement (Agreement) to conduct a sediment remediation and habitat restoration project for the Buffalo River AOC as more fully described in this Agreement (the Project).

The Project, as defined in Paragraph 1.g of this Agreement, is a qualified project under the Great Lakes Legacy Act (GLLA), codified as amended at 33 U.S.C. § 1268(c)(12). The Buffalo River is part of the Buffalo River Area of Concern, and the Project is to be carried out within the Buffalo River Area of Concern, which is wholly or partially within the United States. The Project will complete the dredging and disposal of approximately 500,000 cubic yards of contaminated sediment, the capping of an additional 50,000 cubic yards of contaminated sediment, and the creation/restoration of eight acres of aquatic habitat in the Buffalo River. This Project is based upon a remedial investigation/feasibility study, an evaluation of remedial alternatives and a remedial design conducted by GLNPO and certain of the Non-Federal Sponsors under an earlier GLLA project agreement and its amendments. Certain of the Non-Federal Sponsors submitted an application to GLNPO for the Remediation and Habitat Restoration of the Buffalo River AOC, dated December 2011. The Project is described more completely in the attached Statement of Work.

Section 118(c)(12) of the GLLA, 33 U.S.C. § 1268(c)(12), pertains to the remediation of sediment contamination in Areas of Concern. Under Section 118(c)(12)(D)(iii), 33 U.S.C. § 1268(c)(12)(D)(iii), the Non-Federal Sponsor must enter into a written project agreement under which it agrees to carry out its responsibilities and requirements for the Project. Section 118(c)(12)(E), 33 U.S.C. § 1268(c)(12)(E), specifies the Non-Federal Sponsor's share of the cost of the Project, including, but not limited to: the value and types of any in-kind contribution of material or services that are integral to the Project and are to be provided by the Non-Federal Sponsor; limitations on the credit for any such in-kind contributions provided by the Non-Federal Sponsor; and the Non-Federal Sponsor's responsibility for 100% of the cost of long-term operation and maintenance of the Project.

This Agreement under the GLLA to remediate contaminated sediments will facilitate removing Beneficial Use Impairments and delisting an Area of Concern. The work under this Agreement ties directly to U.S. EPA's Strategic Plan for 2011-2015, Goal 2 (Protecting America's Waters), Objective 2 (Protect and Restore Watersheds and Aquatic Ecosystems), Strategic Measure 4 (Improve the Health of the Great Lakes), that includes remediation of 10.2 million cubic yards of contaminated sediments in the Great Lakes by 2015.

The Estimated Total Project Costs of the Project is \$43,200,000, The Non-Federal Sponsors share of the costs of the Project is 50%, and GLNPO's share of the costs of the Project is 50%.

GLNPO and the Non-Federal Sponsors have the authority and capability to perform as set forth in this Agreement and intend to cooperate in cost-sharing and financing of the Project according to the terms of this Agreement.

GLNPO and the Non-Federal Sponsors, in connection with this Agreement, desire to foster a "partnering" strategy and a working relationship through a mutually developed formal strategy of commitment and communication which creates an environment where trust and team work prevent disputes, foster a cooperative bond, and facilitate completion of a successful project.

NOW, THEREFORE, GLNPO and the Non-Federal Sponsors agree as follows:

## ARTICLE I - DEFINITIONS AND GENERAL PROVISIONS

### 1. For purposes of this Agreement:

- a. "Article" means a portion of this Agreement identified by roman numeral.
- b. "Estimated Total Project Costs" means \$43,200,000,
- b. "Fiscal year" means one fiscal year of GLNPO. The GLNPO fiscal year begins on October 1 and ends on September 30.
- c. "GLLA" means the Great Lakes Legacy Act, 33 U.S.C. § § 1268(c)(12), as amended.
- d. "In-kind contributions" means the value, as established by GLNPO of Project related goods and services provided by the Non-Federal Sponsors that GLNPO determines are integral to the Project, including, but not limited to: construction and operation of Project elements, airspace for the disposal of dredged sediment in an excavated material disposal facility, construction materials, equipment, design or engineering services, laboratory services and staff charges.
- e. "Non-federal proportionate share" means the ratio of the Non-Federal

Sponsors' total cash and in-kind contribution required according to Paragraphs 5 and 19 of this Agreement to the total financial obligations for the Project, as projected by GLNPO.

f. "Paragraph" means a portion of this Agreement identified by Arabic numeral.

g. "Project" means work set forth in the Statement of Work, which is attached hereto and incorporated by reference, including the dredging and disposal of over 500,000 cubic yards of contaminated sediment containing over an estimated 300,000 pounds of PCBs, PAHs and lead from the Buffalo River Area of Concern, and the capping of approximately 50,000 cubic yards of contaminated sediment in place. In addition, approximately eight acres of aquatic habitat will be created and/or restored. GLNPO believes that these efforts are necessary in order to remove beneficial use impairments (BUIs) and delist the AOC.

h. "Project period" means the time from the date the Project Agreement first becomes effective to the date that GLNPO notifies the Non-Federal Sponsor in writing of GLNPO's determination that the Project is complete and can be closed out or is otherwise terminated.

i. "Total Project Costs" means all costs incurred by the Non-Federal Sponsor and/or GLNPO according to this Agreement that are directly related to the work on the Project prior to any operation and maintenance costs. Subject to this Agreement, the term includes, but is not limited to: the value of the Non-Federal Sponsor's in-kind contributions; GLNPO's engineering and design costs during the Project; investigation costs to identify the existence and extent of hazardous substances; actual Project costs; GLNPO's costs of contract dispute settlements or awards; and audit costs pursuant to Paragraphs 34 and 35 of this Agreement. The term does not include any financial obligations for the operation and maintenance of the Project; or any costs of dispute resolution under Article VII of this Agreement.

## ARTICLE II - OBLIGATIONS OF GLNPO AND THE NON-FEDERAL SPONSORS

2. Subject to receiving funds appropriated by the United States Congress, GLNPO shall conduct those portions of the Project assigned to it in the Scope of Work pursuant to the terms of this Agreement.

3. Notwithstanding Paragraph 2, if the award of any contract for constructing the Project features would result in exceeding the Estimated Total Project Costs, GLNPO and the Non-Federal Sponsors shall defer award of that contract and all subsequent contracts for the Project until they mutually agree to amend this Agreement by increasing the Total Project Costs and proceed with further contract awards. Notwithstanding this general provision for deferring contract awards, GLNPO, after signing an amendment to this Agreement that has been

negotiated in good faith with the Non-Federal Sponsors to increase the Total Project Costs, may award a contract or contracts after the Director of GLNPO determines in writing that the award of the contract or contracts must proceed to demobilize personnel and equipment for the orderly wind down of the Project to comply with law or to protect human life or property.

4. By signing this Agreement, the Non-Federal Sponsors certify that their financial management systems meet the following standards:

(1) Financial reporting. Accurate, current, and complete disclosure of the financial results of financially assisted activities is made according to the financial reporting requirements of this Agreement.

(2) Accounting records. The Non-Federal Sponsors maintain records which adequately identify the source and application of funds provided for financially-assisted activities. These records contain information pertaining to authorizations, obligations, unobligated balances, assets, liabilities, outlays or expenditures, and income.

(3) Internal control. Effective control and accountability is maintained for all Project Agreement cash, real and personal property, and other assets. The Non-Federal Sponsors adequately safeguard all such property and assures that it is used solely for authorized purposes.

(4) Budget control. For each Project Agreement, the Non-Federal Sponsors compare actual expenditures or outlays with budgeted amounts. Financial information is related to performance or productivity data, including developing unit cost information whenever appropriate or specifically required in the Project Agreement. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(5) Allowable cost. OMB cost Circular A-87 and the terms of this Agreement will govern in determining the reasonableness, allowability, and allocability of costs.

(6) Source documentation. The Non-Federal Sponsors' accounting records are supported by such source documentation as paid bills, payrolls, time and attendance records, contract award documents, etc.

5. The Non-Federal Sponsors shall contribute a share of the Total Project Costs as follows:

a. GLNPO will estimate, based on the information provided by the Non-Federal Sponsors and other information available to GLNPO, the Total Project Costs.

b. GLNPO will estimate the amount of cost share to be provided by the Non-Federal Sponsors, which may include in-kind contributions that are determined to be integral to

the Project. In-kind contributions can include, but are not limited to the following:

- (1) Lands;
- (2) Equipment;
- (3) Labor;
- (4) Airspace for the disposal of dredged sediment; and
- (5) Work or services performed by the Non-Federal Sponsor as set forth in the Statement of Work for the Project.

c. The Non-Federal Sponsors shall provide GLNPO with an estimate of the amount of cost share, if any, which it will provide through in-kind contributions.

d. If the amount of the in-kind contributions which the Non-Federal Sponsor projects to provide to the Project is less than 50% of the Total Project Costs, the Non-Federal Sponsors shall provide an additional cash contribution, pursuant to Paragraph 20, in the amount necessary to make its total contribution equal to 50% of total costs of the Project.

6. GLNPO shall perform a final accounting according to Paragraph 23 after work is completed on the Project to determine the value of the Non-Federal Sponsors' contributions under this Agreement to determine whether the Non-Federal Sponsors have met their financial obligations under GLLA.

7. The Non-Federal Sponsors shall not use federal program funds to meet any of their obligations for the Project under this Agreement.

8. The Non-Federal Sponsors certify that the Non-Federal Sponsors and, to their knowledge, any of their contractors who will execute work under this Agreement:

a. Are not presently or proposed to be debarred or suspended, declared ineligible or voluntarily excluded from federal, state or local ("public") transactions;

b. Have not within a three year period preceding this Agreement been convicted of or had a civil judgment rendered against them for (i) fraud or commission of a criminal offense in connection with obtaining, attempting to obtain, or performing a public transaction or contract under a public transaction, (ii) violation of federal or state antitrust laws, or (iii) embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a public entity with commission of any of the offenses enumerated under Paragraph 8.b; and

d. Have not within the preceding three years had a public transaction terminated for cause or default.

9. The Non-Federal Sponsors will insure that projects involving collection of environmental data (measurements or information that describe environmental processes, location, or conditions; ecological or health effects and consequences; or the performance of environmental technology) meet the American National Standard Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs, ANSI/ASQC EPA-04--2004 "Quality System Documentation" includes a Quality Management Plan (QMP), a Quality Assurance Project Plan (QAPP), or such other documentation which demonstrates compliance with ANSI/ASQEPA-04-E4-2004.

### ARTICLE III - LANDS, EASEMENTS, AND PUBLIC LAW 91-646 COMPLIANCE

10. GLNPO, after consulting with the Non-Federal Sponsors, shall determine the lands, easements, or rights-of-way necessary for conducting the Project, including those necessary for the disposal of dredged or excavated material, or relocations, and those lands, easements, or rights-of-way that are subject to the navigation servitude. Before construction begins, the Non-Federal Sponsor shall acquire all lands, easements, or rights-of-way necessary for the construction, as set forth in the Final Design for the Project, provided however that GLNPO, and not the Non-Federal Sponsor, shall be responsible for acquiring the rights to use the Army Corps of Engineer's Buffalo Confined Disposal Facility for the disposal of dredged or excavated materials. Furthermore, before issuing the solicitation for each GLNPO contract for constructing or operating and maintaining the Project, or before GLNPO incurs any financial obligation for constructing or operating and maintaining the Project if it elects to perform with its contractors, the Non-Federal Sponsors shall acquire all lands, easements, or rights-of-way that GLNPO determines the Non-Federal Sponsor must provide for that work and shall authorize GLNPO to enter the lands, easements, or rights-of-way.

11. Until GLNPO furnishes the Non-Federal Sponsors with the results of the final accounting pursuant to Paragraph 23, the Non-Federal Sponsors in a timely manner shall provide GLNPO the documents that are necessary for it to determine the value of any contribution provided pursuant to Paragraph 10. Upon receiving these documents, GLNPO shall afford credit for the value of the contribution according to Paragraph 5.

12. The Non-Federal Sponsors shall comply with the applicable provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Public Law 91-646, as amended by Title IV of the Surface Transportation and Uniform Relocation

Assistance Act of 1987 (Public Law 100-17), and the Uniform Regulations at 49 C.F.R. Part 24, in acquiring lands, easements, or rights-of-way necessary for completing or operating and maintaining the Project, including those necessary for relocations , and shall inform all affected persons of applicable benefits, policies, and procedures in connection with the Act.

#### ARTICLE IV - CREDIT FOR VALUE OF LANDS AND RELOCATIONS

13. The Non-Federal Sponsors shall receive credit according to Paragraph 5 for the value of the lands, easements, or rights-of-way that it provides pursuant to Article III. However, the Non-Federal Sponsors shall not receive credit for the value of any lands, easements, or rights-of-way that it provided previously for another federal project. The Non-Federal Sponsors also shall not receive credit for the value of lands, easements, or rights-of-way that were acquired or provided using federal program funds.

14. For the sole purpose of affording credit according to this Agreement, the value of lands, easements, and rights-of-way, including those necessary for the borrowing of material, or the disposal of dredged or excavated material, shall be the fair market value of the real property interests, plus certain incidental costs of acquiring those interests, as determined according to this Paragraph.

a. Date of Valuation. The fair market value of lands, easements, or rights-of-way owned by the Non-Federal Sponsors on the effective date of this Agreement shall be the fair market value of the real property interests on the date the Non-Federal Sponsors authorize GLNPO to enter the property. The fair market value of lands, easements, or rights-of-way acquired by the Non-Federal Sponsors after the effective date of this Agreement shall be the fair market value of the real property interests at the time the interests are acquired.

b. General Valuation Procedure. Except as provided in Paragraph 14.c, the fair market value of lands, easements, or rights-of-way shall be determined according to Paragraph 14.b.i, unless a different amount is determined later to represent fair market value according to Paragraph 14.b.ii.

i. The Non-Federal Sponsors shall obtain, for that real property interest, an appraisal prepared by a qualified appraiser who is acceptable to the Non-Federal Sponsors and GLNPO. The appraisal shall be prepared according to the applicable rules of just compensation, as specified by GLNPO. The fair market value shall be the amount in the Non-Federal Sponsors' appraisal, if GLNPO approves the appraisal. If GLNPO does not approve the Non-Federal Sponsors' appraisal, GLNPO may obtain an appraisal, and the fair market value shall be the amount in GLNPO's appraisal, if the Non-Federal Sponsors approve the appraisal. If the Non-Federal Sponsors do not approve GLNPO's appraisal, GLNPO, after consultation with the Non-Federal Sponsor, shall consider both parties' appraisals and shall determine the fair market

value based on both appraisals.

ii. Where the amount paid or proposed to be paid by the Non-Federal Sponsors for the real property interest exceeds the amount determined pursuant to Paragraph 14.b.i, GLNPO, at the request of the Non-Federal Sponsors, shall consider all factors relevant to determining fair market value and, in its sole discretion, after consulting with the Non-Federal Sponsor, may approve in writing an amount greater than the amount determined pursuant to Paragraph 14.b.i, but not to exceed the amount actually paid or proposed to be paid. If GLNPO approves such an amount, the fair market value shall be the lesser of the approved amount or the amount paid by the Non-Federal Sponsor, but no less than the amount determined pursuant to Paragraph 14.b.i.

c. Waiver of Appraisal. GLNPO may waive the requirement for an appraisal to determine the value of a real property interest for crediting purposes if it determines that an appraisal is unnecessary because the valuation is uncomplicated and that the estimated fair market value of the real property interest is \$10,000 or less based upon a review of available data. In such event, GLNPO and the Non-Federal Sponsors must agree in writing to the value of the real property interest in an amount not to exceed \$10,000.

d. Eminent Domain Valuation Procedure. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted after the effective date of this Agreement, the Non-Federal Sponsors shall submit to GLNPO, prior to instituting the proceedings, a written notice of its intent to institute the proceedings and an appraisal of the specific real property interests to be acquired in the proceedings. GLNPO shall have 60 calendar days after receipt of the notice and appraisal to review the appraisal, if not previously approved by GLNPO in writing.

i. If GLNPO previously has approved the appraisal in writing, or if GLNPO provides written approval of, or takes no action on, the appraisal within the 60-day period, the Non-Federal Sponsors shall use the amount in the appraisal as the estimate of just compensation in instituting the eminent domain proceeding.

ii. If GLNPO provides written disapproval of the appraisal, including the reasons for disapproval, within the 60-day period, GLNPO and the Non-Federal Sponsors shall consult in good faith to resolve promptly the issues or areas of disagreement identified in GLNPO's written disapproval. If after good faith consultation, GLNPO and the Non-Federal Sponsors agree as to an appropriate amount, then the Non-Federal Sponsors shall use that amount as the estimate of just compensation in instituting the eminent domain proceeding. If after the good faith consultation, GLNPO and the Non-Federal Sponsors cannot agree on an appropriate amount, the Non-Federal Sponsors may use the amount in its appraisal as the estimate of just compensation in instituting the eminent domain proceeding.



iii. For lands, easements, or rights-of-way acquired by eminent domain proceedings instituted according to this Paragraph, fair market value shall be either the amount of the court award for the real property interests taken to the extent GLNPO determined such interests are necessary for constructing, operating, or maintaining the general navigation features, or the amount of any stipulated settlement or portion thereof that GLNPO approves in writing.

## ARTICLE V - PROJECT COORDINATION TEAM

15. To provide for consistent and effective communication, the Non-Federal Sponsors and GLNPO, not later than 30 business days after the effective date of this Agreement, shall appoint named senior representatives to a Project Coordination Team. The Project Coordination Team shall meet or talk regularly until the end of the Project period. GLNPO's Project Manager and a counterpart named by the Non-Federal Sponsors shall co-chair the Project Coordination Team.

16. GLNPO's Project Manager and the Non-Federal Sponsors' counterparts shall keep the Project Coordination Team informed of Project progress and significant pending issues and actions, and shall seek the views of the Project Coordination Team on matters that the Project Coordination Team generally oversees.

17. Until Project completion, the Project Coordination Team shall generally oversee the Project including, but not necessarily limited to, matters related to design; plans and specifications; scheduling; real property, relocation, and removal requirements; real property acquisition; contract awards or modifications; contract costs; the application of and compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act and the Copeland Anti-Kickback Act for relocations; GLNPO's cost projections; final inspection of the entire Project or functional portions of the Project; preparation of the management plan for proposed dredged or excavated material disposal; anticipated requirements for operating and maintaining the general navigation features; and other Project-related matters. The Project Coordination Team also shall generally oversee the coordination of Project schedules.

18. The Project Coordination Team may make recommendations to the Project Managers on Project-related matters that the Project Coordination Team generally oversees, including suggestions to avoid potential sources of dispute. GLNPO and the Non-Federal Sponsors in good faith shall consider the recommendations of the Project Coordination Team. GLNPO and the Non-Federal Sponsor may accept or reject, in whole or in part, the Project Coordination Team's recommendations.

## ARTICLE VI - METHOD OF PAYMENT

19. As of the effective date of this Agreement, the Estimated Total Project Costs are \$43,200,000, and the Non-Federal Sponsors' contribution required under Paragraph 5 is projected at \$21,600,000. These amounts are subject to adjustment by GLNPO and are not to be construed as the total financial responsibilities of GLNPO and the Non-Federal Sponsors if a modification to this Agreement is signed by GLNPO and the Non-Federal Sponsors that increases the Estimated Total Project Costs.

20. In providing its required share of the Total Project Costs required by Paragraph 5, the Non-Federal Sponsor shall provide in-kind services and cash payments to the Project according to the provisions of this Paragraph.

a. Since the Non-Federal Sponsors are meeting certain of the cost share requirements through in-kind costs, the Non-Federal Sponsors shall submit detailed documentation of the work they perform under this Project Agreement. The Non-Federal Sponsors shall provide GLNPO with quarterly reports beginning with the first full three-month period after the effective date of this Agreement. The quarterly report shall, at a minimum, include a summary of work accomplished by the Non-Federal Sponsors in the previous quarter on each element of the Project, a projected schedule for work and other milestones, and a discussion of costs incurred to date and percentage of the Non-Federal Sponsors' costs paid by the Non-Federal Sponsors to date. For the Non-Federal Sponsors' portion of the costs, the costs shall be broken down into the following categories: direct costs (personnel, contract, equipment) and indirect costs. This report shall also include detailed documentation of the Non-Federal Sponsors' in-kind costs incurred to meet its cost share requirement. Upon execution of the Project Agreement, the GLNPO Project Manager will provide the Non-Federal Sponsors with guidance concerning documentation of in-kind costs.

b. The Non-Federal Sponsors are also meeting certain of their cost share requirements through cash payments/contributions. Approximately 10 days after bid opening for the contract(s) for dredging and habitat restoration construction (currently scheduled for February 2013), GLNPO shall invoice the Non-Federal sponsors for their share of the dredging and habitat restoration construction contract costs. It is currently estimated that the Non-Federal share of dredging and habitat restoration construction contract costs will be between \$15 million to \$18 million, but the actual amount of such costs will be dependent on the final bid amounts. Within 30 days of receipt of the invoice for their share of the dredging and habitat restoration construction costs, the Non-Federal Sponsors shall pay their share to GLNPO. GLNPO shall hold and track the Non-Federal contribution in a manner such that it is only used to pay for the Non-Federal share of dredging and habitat restoration construction costs. When a dredging or habitat restoration contractor submits an invoice to GLNPO seeking payment pursuant to a contract for dredging and/or habitat restoration work, GLNPO shall promptly submit a copy of such invoice to the Non-Federal Sponsors (GLNPO may redact Confidential Business

Information unless the contractor at issue authorizes GLNPO to provide the invoice in unredacted form). The Non-Federal Sponsors may raise objections with regard to any contractor invoice provided such objections are submitted to GLNPO within 10 days of receipt of the contractor invoice in question. In the event that the Non-Federal Sponsors raise an objection, GLNPO, if it agrees with the objection, shall address the objection with the contractor. In the event that GLNPO does not agree with the Non-Federal Sponsors' objection, as between GLNPO and the Non-Federal Sponsors, the objection shall be resolved through the dispute resolution process if the Non-Federal Sponsors invoke the dispute resolution process. Subject to limits on shares, any payments made to a contractor for dredging and/or habitat restoration construction contract costs shall be paid one-half with money provided by the Non-Federal Sponsors and one-half with money provided by GLNPO. After the initial invoice is sent, GLNPO will invoice the Non-Federal sponsors on an approximate quarterly basis for the estimated Non-Federal Sponsors cash contribution. The Non-Federal Sponsors shall pay the invoices in the manner outlined in Paragraph 24, below within 30 days of an invoice provided to the Non-Federal Sponsor by the GLNPO Project Manager.

21. If at any time GLNPO determines that an increase in the Total Project Costs is necessary to complete the Project and additional funds or in-kind contributions will be needed from the Non-Federal Sponsors to cover the non-federal proportionate share of the increased Total Project Costs, GLNPO shall notify the Non-Federal Sponsors in writing of the additional funds required and shall explain why they are required. If the parties sign a modification to this Agreement to increase the Total Project Costs the Non-Federal Sponsors, within 90 calendar days from receipt of the notice, shall pay the additional cash contribution, or shall make the additional in-kind contributions available, required to meet the non-federal proportionate share, in the manner described in Paragraph 20, and GLNPO shall fulfill the increased federal share.

22. Until GLNPO gives the Non-Federal Sponsors the results of the final accounting, GLNPO shall maintain current records of contributions provided by the parties, current projections of the Total Project Costs, and costs due to additional work under Paragraph 5, or Paragraph 14.d.

23. Upon completion of the Project or termination of this Agreement before Project completion and upon resolution of all relevant proceedings, claims, and appeals, GLNPO shall conduct a final accounting, based primarily on the information provided by the Non-Federal Sponsor under Paragraph 20 or at the request of the GLNPO Program Manager, and give the Non-Federal Sponsors the final accounting results. GLNPO may perform an interim accounting on its own or, if requested by the Non-Federal Sponsors.

a. GLNPO's final accounting shall determine the Total Project Cost, each party's total contribution toward the Project, and measure that contribution against each party's required share for the Project.

b. If the final accounting shows that the Non-Federal Sponsors' total contribution is less than its required share of the Total Project Costs, the Non-Federal Sponsors shall, within 90 calendar days after receipt of written notice, pay the amount necessary to meet their required share by delivering a check payable in the manner described in Paragraph 24, below.

c. If the final accounting shows that one or more of the Non-Federal Sponsors' total contribution (including all in-kind contributions) is more than their required share of the Estimated Total Project Costs, GLNPO, shall, subject to the availability of funds and subject to appropriations, reimburse those other Non-Federal Sponsors any cash that they have provided as soon as practicable. However, the Non-Federal Sponsors will not be reimbursed for in-kind contributions that are in excess of their required share of the Total Project Costs.

d. Payment to the Non-Federal Sponsors shall be completed by Electronic Wire Transfer (EFT) via the Transit/ABA Routing Number that Honeywell will provide in the event of such payment. Notification of this EFT should be sent at least 24 hours in advance of transfer to Honeywell.

24. In the event that the Non-Federal Sponsors have not provided enough funding to meet its required proportionate share of Total Project Costs, GLNPO will provide the Non-Federal Sponsors with an invoice for the balance required and the Non-Federal Sponsors shall submit a check, made payable to the order of the "Treasurer, United States of America," to the address specified on the invoice. The check shall contain a notation referencing a Budget Organization account number that GLNPO shall provide after this Agreement is executed. In the case of an Electronic Fund Transfer (EFT), the Non-Federal Sponsors shall contact EPA to obtain the appropriate instructions on payment submittal.

The Non-Federal Sponsors shall provide a copy of the check or EFT transmission to GLNPO to the person listed in Paragraph 45, below.

## ARTICLE VII - DISPUTE RESOLUTION

25. Unless otherwise expressly provided for in this Agreement, the dispute resolution procedures of this Article are the exclusive mechanism to resolve disputes arising under or with respect to this Agreement.

26. Any dispute which arises under or with respect to this Agreement initially shall be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed 20 business days from the time the dispute arises, unless extended by written agreement of the parties to the dispute. The informal dispute period arises when the party not in dispute receives the other party's written notice of dispute.

27. Statements of Position.

a. If the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, the position advanced by GLNPO shall be binding unless, within 10 business days after the conclusion of the informal negotiations, the Non-Federal Sponsor invokes the formal dispute resolution procedures of this Article by serving on GLNPO a written statement of position on the matter in dispute. The statement of position shall include, but is not limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the Non-Federal Sponsors.

b. Within 30 business days after receiving the Non-Federal Sponsors' statement of position, GLNPO shall serve on the Non-Federal Sponsors its statement of position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting documentation relied upon by GLNPO. Within 20 business days after receiving GLNPO's statement of position, the Non-Federal Sponsors may submit a reply.

c. GLNPO shall maintain an administrative record of the dispute that contains all statements of position, including supporting documentation, submitted pursuant to this Paragraph. Where appropriate, GLNPO may allow submission of supplemental statements of position by the parties to the dispute.

d. The Director of GLNPO will issue a final administrative decision resolving the dispute based on the administrative record described above. This decision shall bind the Non-Federal Sponsors.

ARTICLE VIII - OPERATION AND MAINTENANCE

28. Subject to applicable federal laws and regulations, the Non-Federal Sponsors, at no cost to GLNPO, shall operate and maintain the elements of the Project constructed in the river pursuant to this Agreement as set forth in the Final Design. The Non-Federal Sponsors shall be responsible for taking all actions necessary to undertake the operation and maintenance for the Project as set forth in the Final Design.

29. The Non-Federal Sponsor authorizes GLNPO to enter, at reasonable times and in a reasonable manner, upon property that the Non-Federal Sponsor owns or controls for the purpose of monitoring the effectiveness of the operation and maintenance of the Project. However, nothing in this Agreement conveys to GLNPO any interest in real property owned or controlled by the Non-Federal Sponsors.

## ARTICLE IX - SEVERABILITY CLAUSE

32. If a court issues an order that invalidates any provision of this Agreement, the parties shall remain bound to comply with all provisions of this Agreement not invalidated or determined to be subject to a sufficient cause defense by the court's order.

## ARTICLE X - MAINTENANCE OF RECORDS AND AUDIT

33. GLNPO and the Non-Federal Sponsor shall maintain such books, records, documents, or other evidence related to this Project and the work performed for at least five years after the completion of the Final Accounting discussed in Paragraph 23, above,. To the extent permitted under applicable federal laws and regulations, GLNPO and the Non-Federal Sponsors shall each allow the other to inspect the books, records, documents, or other evidence, except work claimed as attorney client privileged.

34. a. The parties agree that Riverkeeper is responsible for complying with the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501-7507, as implemented by Office of Management and Budget (OMB) Circular No. A-133. Riverkeeper shall provide to GLNPO Single Audit Act reports for each year during which work was performed under this Project Agreement within 30 days of the availability of that report. Upon request of Riverkeeper and to the extent permitted under applicable federal laws and regulations, GLNPO shall give Riverkeeper and independent auditors any information necessary to enable an audit of Riverkeeper's activities under this Agreement. The costs of any non-federal audits performed pursuant to this Paragraph before GLNPO furnishes Riverkeeper with the results of the final accounting shall be allocated according to the provisions of OMB Circulars A-87 and A-133, and the costs that are allocated to the Project shall be included in Total Project Costs and shared according to the provisions of this Agreement.

b. The parties agree that Honeywell is responsible for complying with any auditing requirements imposed upon its organization. As part of this Project Agreement Honeywell agrees to provide GLNPO with audited financial statements for each year during which work was performed under this Project Agreement within 30 days of the availability of those statements. Upon request of Honeywell and to the extent permitted under applicable federal laws and regulations, GLNPO shall give Honeywell and independent auditors any information necessary to enable an audit of Honeywell's activities under this Agreement. The costs of any non-federal audits performed pursuant to this Paragraph before GLNPO furnishes Honeywell with the results of the final accounting shall be allocated according to the provisions of OMB Circulars A-87 and A-133, and the costs that are allocated to the Project shall be included in Total Project Costs and shared according to the provisions of this Agreement.

35. In accordance with 31 U.S.C. § 7503, GLNPO may conduct audits in addition to any audit that the Non-Federal Sponsors already conduct. The costs of GLNPO audits performed pursuant to this Paragraph before GLNPO furnishes the Non-Federal Sponsors with the results of the final accounting shall be included in the Total Project Costs, and shared according to the provisions of this Agreement.

#### ARTICLE XI - FEDERAL LAWS AND REGULATIONS

36. In the exercise of their respective rights and obligations under this Agreement, the Non-Federal Sponsors and GLNPO agree to comply with all applicable federal laws and regulations, including, but not limited to:

a. Section 601 of the Civil Rights Act of 1964, Public Law 88-352 (42 U.S.C. § 2000d); and all applicable federal labor standards requirements including, but not limited to 40 U.S.C. §§ 3141-3148 and 40 U.S.C. §§ 3701-3708 (revising, codifying and enacting without substantive change);

b. The provisions of the Davis-Bacon Act (formerly 40 U.S.C. § 276a *et seq.*);

c. The Contract Work Hours and Safety Standards Act (formerly 40 U.S.C. § 327 *et seq.*), debarment and suspension requirements (40 C.F.R. Part 32);

d. The Copeland Anti-Kickback Act (formerly 40 U.S.C. § 276c) and the Endangered Species Act (16 U.S.C. § 1534 to 1544);

e. Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60-4 relating to federally-assisted construction contracts; and

#### ARTICLE XII - RELATIONSHIP OF PARTIES

37. In the exercise of their respective rights and obligations under this Agreement, GLNPO and the Non-Federal Sponsors each act in an independent capacity, and neither is considered the officer, agent, or employee of the other.

38. In the exercise of their rights and obligations under this Agreement, neither party shall provide, without the consent of the other party, any contractor with a release that waives or purports to waive any rights the other party may have to seek relief or redress against that contractor.

#### ARTICLE XIV - TERMINATION OR SUSPENSION

39. If the Non-Federal Sponsors fail to fulfill their obligations under this Agreement, or if the Director of GLNPO, in his sole discretion, determines it would be impractical to continue work for any reason, but particularly if continuing the work is not expected to achieve the objectives of the Project, the Director shall terminate this Agreement or suspend future performance under this Agreement unless he determines that continuation of work on the Project is in the interest of the United States, or is necessary to satisfy agreements with any other non-federal interests in connection with the Project.

40. If GLNPO does not receive annual appropriations sufficient to meet its share of scheduled expenditures for the Project for the then-current or upcoming fiscal year, GLNPO shall notify the Non-Federal Sponsors in writing, and GLNPO may without penalty terminate this Agreement or suspend future performance under this Agreement. If GLNPO suspends future performance pursuant to this Paragraph, the suspension shall remain in effect until GLNPO receives sufficient appropriations or until GLNPO terminates this Agreement, whichever occurs first.

41. If GLNPO terminates this Agreement pursuant to this Article, both parties shall conclude their activities relating to the Project and proceed to a final accounting pursuant to Paragraph 23.

42. Any termination of this Agreement or suspension of future performance under this Agreement shall not relieve the parties of liability for any obligation previously incurred. Interest shall accrue on any delinquent payment owed by the Non-Federal Sponsors at a rate, to be determined by the Secretary of the Treasury, equal to 150 percent of the average bond equivalent rate of the 13-week Treasury bills auctioned immediately before the payment became delinquent, or auctioned immediately before the beginning of each additional 3-month period if the period of delinquency exceeds 3 months.

43. Any Non-Federal Sponsor may terminate its participation in this Agreement if GLNPO materially breaches its obligations pursuant to this Agreement.

#### ARTICLE XV - HISTORIC PRESERVATION

44. The Non-Federal Sponsors shall evaluate the Project's impact on historic property. The costs of identification, survey and evaluation of historic properties shall be included in Total Project Costs and shared according to this Agreement.



## ARTICLE XVI - NOTICES

45. Unless otherwise specified here, any notice, request, demand or other communication required or permitted under this Agreement between the parties shall be in writing and addressed as follows:

to Riverkeeper:

Jill Spisiak Jedlicka  
Executive Director  
Buffalo Niagara Riverkeeper  
1250 Niagara Street  
Buffalo, New York 14213  
716-852-7483 EXT. 21

to Honeywell:

John J. Morris P.E.  
Remediation Portfolio Director  
Honeywell  
101 Columbia Road  
Morristown, NJ 07962  
973-455-4003

to GLNPO:

Mary Beth Giancarlo  
Project Manager  
Great Lakes National Program Office  
77 West Jackson Blvd. (G-17J)  
Chicago, IL 60604  
(312) 886-2253

46. Either party may change its notice address provided in Paragraph 45 by written notice to the other party.

47. The addressee shall be deemed to have received any notice given pursuant to this Agreement at the earlier of the date it is actually received, or seven calendar days after it is mailed.

## ARTICLE XVII - CONFIDENTIALITY

48. To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

## ARTICLE XVIII - RESPONSIBLE PARTIES

49. If it is discovered through any investigation for hazardous substances or other means that CERCLA liability, or liability under any other federal or state authority, for hazardous substances addressed by the Project can be attributed to a potentially responsible party, the Non-Federal Sponsor and GLNPO shall provide prompt written notice to each other. The Non-Federal Sponsor and GLNPO shall consult according to Article V in an effort to ensure that potentially responsible parties bear their fair share of clean up and response costs as defined in CERCLA or other federal or state law. Implementation of the Project shall not relieve any third party from any liability that may arise under CERCLA or other federal or state law.

## ARTICLE XIX - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

50. This Agreement does not create any rights, confer any benefits, or relieve any liability, for any third person not party to this Agreement.

## ARTICLE XX - NON-LIABILITY OF OFFICERS AND EMPLOYEES

51. No officer, agent, consultant, or employee of the Non-Federal Sponsors or of GLNPO, may be charged personally, or held liable, under this Agreement because of any breach, attempted breach, or alleged breach of this Agreement.

52. This Agreement will become effective on the date the GLNPO representative signs this Agreement.

## ARTICLE XXI - AUTHORITY OF SIGNATORY TO BIND AND AVAILABILITY OF FUNDS

53. Each undersigned representative of the Non-Federal Sponsors and GLNPO certifies that he or she is fully authorized to enter into the terms of this Agreement and to execute and legally bind such Party to this Agreement.

54. Each undersigned representative of the Non-Federal Sponsor certifies that that Non-Federal Sponsor has the funds and financial capability to meet its required proportionate share of the Total Project Costs under this Agreement.

55. The execution of this agreement does not constitute an admission of liability by any Party to this Agreement.

By:



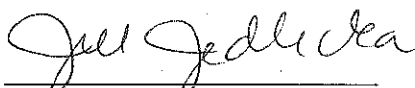
Susan Hedman  
Great Lakes National Program Manager  
U.S. Environmental Protection Agency

Date:

9-20-12

**Project Agreement between U.S. EPA, Honeywell and the Buffalo Niagara Riverkeeper**

By:



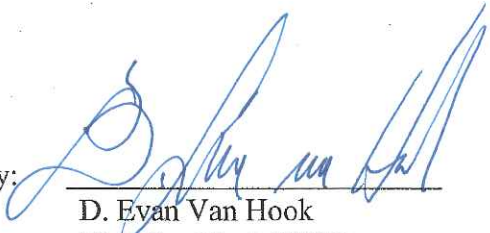
Jill Spisiak Jedlicka  
Executive Director  
Buffalo Niagara Riverkeeper

Date:

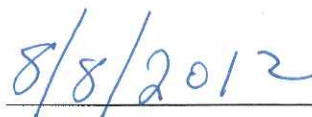


**Project Agreement between U.S. EPA, Honeywell and the Buffalo Niagara Riverkeeper**

By:

  
D. Evan Van Hook  
Vice President, HSER  
Honeywell International Inc.

Date:

  
8/8/2012

**Great Lakes Legacy Act  
Statement of Work  
Buffalo River Sediment Remediation and  
Habitat Restoration Project Agreement  
Buffalo River Area of Concern,  
Buffalo, New York**

**Final: August, 2012**

## **I. PURPOSE**

This statement of work (SOW) provides a detailed summary of the work to be performed as part of the Great Lakes Legacy Act (GLLA) project agreement between Honeywell International Inc. and the Buffalo Niagara Riverkeeper (Riverkeeper), collectively forming the Non-federal Sponsors (NFS) and the U.S. Environmental Protection Agency (EPA) for the remediation of contaminated sediments and the restoration of aquatic habitats in the Buffalo River AOC.

During implementation of this SOW, it remains the goal of all parties hereto that GLNPO and the Non-Federal Sponsors (NFS) will continue to foster a partnering strategy and a working relationship through a mutually-developed technical approach and communication which creates an environment where trust and team work prevent disputes, foster a cooperative bond, and facilitate completion of a successful project.

## **II. BACKGROUND**

The Buffalo River AOC is located in Erie County in the northwest corner of the State of New York. The river flows from the east and enters Lake Erie near the head of the Niagara River. The AOC extends from the mouth of the Buffalo River to the farthest point upstream at which the backwater condition exists during Lake Erie's highest monthly average lake level. The AOC includes the approximately 6.2 miles (10 km) of the Buffalo River and the entire 1.4-mile (2.3 km) stretch of the City Ship Canal, located adjacent to the river (See Figure 1). Priority actions in the Buffalo River AOC, not all of which are the subject of this Project Agreement, include:

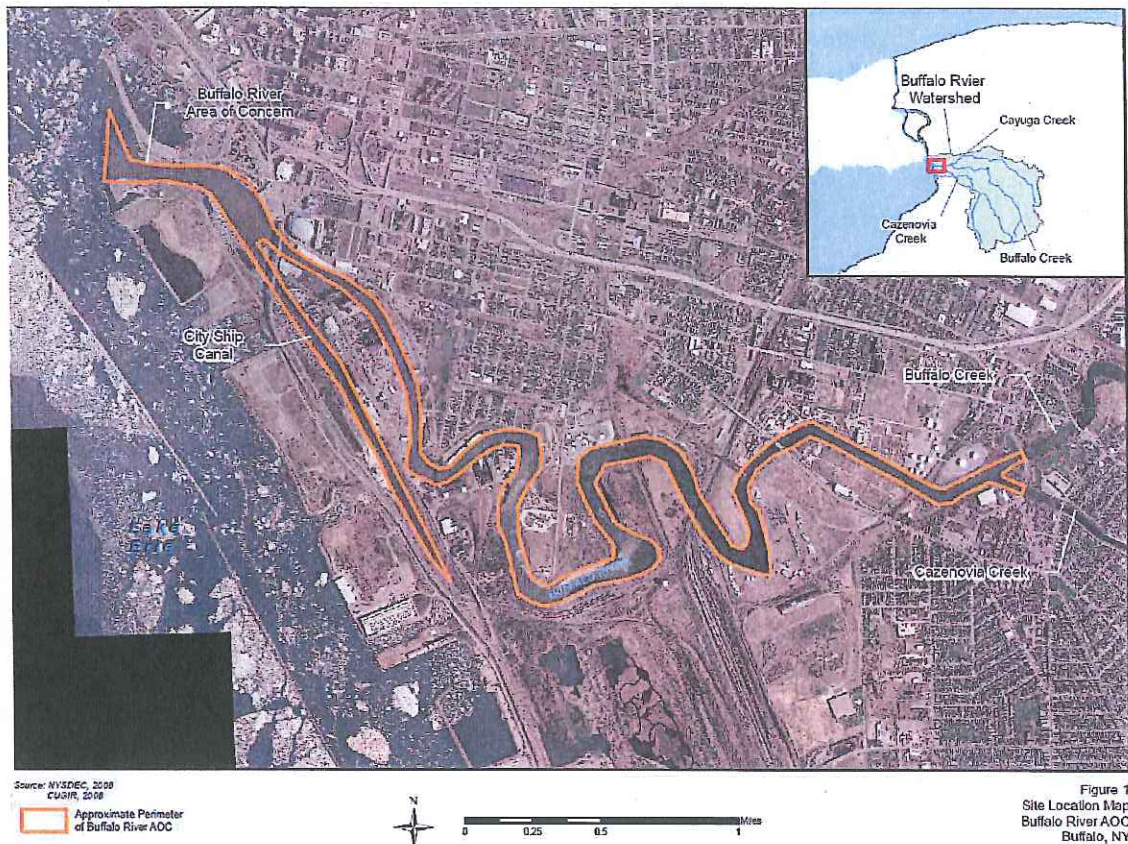
- remediation of contaminated sediments;
- restoration of aquatic and near shore habitat;
- control of nonpoint source pollution; and
- control of CSOs.

The priority actions included in the Project Agreement will focus on identified contaminated sediments in select locations throughout the entire AOC, extending to River Mile (RM) 5.8, just downstream of the confluence of the Buffalo River and Cazenovia Creek. Aquatic and near shore restoration in five areas of the Buffalo River is also a priority action included in this Project Agreement.

Since 2007, when Honeywell joined the existing EPA and Riverkeeper GLLA project agreement, the parties have worked in partnership with others to complete remedial investigation, feasibility study, and remedial design work for a potential sediment remediation project in the Buffalo River AOC. Through the partnership the Army Corp of Engineers has completed the removal of 452,000 cubic yards of sediment along the navigation channel of the Buffalo River. In addition this partnership has resulted in the development of two Intermediate BODR documents that describe the remediation of approximately 550,000 cubic yards of contaminated sediments, including dredging and



disposal of approximately 500,000 cubic yards of contaminated sediments and the in situ subaqueous capping of approximately 50,000 cubic yards of contaminated sediments at the head of the City Ship Canal. The design documents also detail five (5) habitat restoration projects within the AOC, each with an aquatic and riparian element. Only the aquatic element of the restoration is covered by this SOW. This SOW summarizes the major components of the remedial action phase of this project and identifies partners' responsibilities.



**Figure 1. Buffalo River Project Site, Buffalo, New York.**

The following documents describe the current conceptual and design level details of the GLLA Buffalo River Sediment Remediation and Habitat Restoration Project:

1. "Basis of Design Report, Buffalo River Area of Concern, Intermediate Design for Sediment Remediation, Buffalo, New York", December 2011.
2. "Basis of Design Report, Buffalo River Area of Concern, Intermediate Design for Habitat Restoration, Buffalo, New York", December 2011.
3. "Feasibility Study for the Buffalo River, New York", November 2010.

Not all restoration components of the intermediate design documents will be implemented as part of the GLLA project. Work performed pursuant to the Project Agreement will be governed by a Final Design acceptable to all signatory parties to the



Project Agreement. Specific components currently contemplated to be implemented under the GLLA project are described in more detail below.

### III. GENERAL

The Non-Federal Sponsors, EPA, their respective contractors, and the Project Coordination Team (PCT) will coordinate to develop and/or modify, as needed, all final engineering design documents necessary for contracting and constructing the sediment remediation and habitat restoration projects described in the design documents (other than those identified below as excluded) for addressing sediment remediation and habitat restoration activities in the Buffalo River AOC. The Non-Federal Sponsor and EPA representatives will serve as co-chairs of the PCT and will coordinate on all aspects of the engineering design and remedial action. Remedial actions to be taken are described more fully in the BODR documents listed in Section II (other than those identified below as excluded), but are summarized below.

The following tasks will be completed as part of the remedial action process.

1. Acquisition of lands, easements and rights of way (Non Federal Sponsor lead, except that EPA is lead for acquisition of approval to use the CDF)
2. Permitting and Liability Waivers (Non Federal Sponsor lead)
3. Sediment remediation, approximately 550,000 cubic yards of contaminated sediments will be remediated as follow:
  - a. Dredging and disposal of approximately 380,000 CY of Non-TSCA sediments from the Buffalo River (EPA lead)
  - b. Dredging and disposal of approximately 115,000 CY of Non-TSCA sediments from the City Ship Canal (EPA lead)
  - c. Dredging and disposal of approximately 5,400 CY of TSCA sediments (EPA lead)
  - d. In situ sub-aqueous capping of approximately 50,000 CY in the City Ship Canal (EPA lead)
4. Construction monitoring (EPA lead)
  - a. Water quality monitoring
  - b. Operational Monitoring and Confirmation Sampling
5. Construction oversight (EPA Lead)
6. Habitat Restoration (EPA Lead)
  - a. Two, permit required habitat restoration projects in the Buffalo River
  - b. One, habitat restoration project in conjunction with the in situ cap in the City Ship Canal
  - c. Two, additional habitat restoration projects in the Buffalo River
7. CDF Dike Wall Rehabilitation in lieu of tipping fee (EPA Lead)
8. Recovery Verification Monitoring, 2 Years and 5 Years Post Dredging (Non-Federal Sponsor Lead)

Technical details and costs associated with each of these tasks are detailed in the sediment remediation and habitat restoration BODRs (Note: riparian restoration repair tasks of the BODRs are excluded from this project agreement).

#### **IV. TASKS, RESPONSIBILITIES, AND DELIVERABLES**

Project tasks, responsibilities, and task deliverables are described below. Deliverables are summarized in Table 1. Unless otherwise noted, the Non-Federal Sponsors and their partners and EPA will jointly share responsibilities for review, evaluation, and comment on all documents, reports, and laboratory results developed by the Non-Federal Sponsor, EPA, their agencies, laboratories, and/or contractors as part of the PA.

In order to ensure the cost-effective and efficient implementation of the project tasks, the project coordinators for EPA and the NFS may agree to shift the lead roles for completion of the various project tasks, through mutual written email or letter agreement, or after mutually accepted revisions to this SOW.

##### **TASK 1 PROJECT PLANNING AND SUPPORT**

This task includes work efforts related to project initiation and support. The NFS and EPA will be jointly responsible for project planning and support. Typical activities include:

- Development and review of project work plans, schedules, and budgets and associated cost estimate (for work plan changes only).
- Coordination with local, state, and federal agencies.
- Preparation of regular progress reports.
- Management of project resources and overall project guidance.

##### Deliverables

Required deliverables are identified in Table 1.

##### **TASK 2 PRE-AWARD ACTIVITIES**

This task includes activities required to obtain and evaluate bids for project construction. Completion of pre-award activities during remedial design will allow for an expedited contracting and construction schedule, as well as obtain more accurate cost estimates for the construction project. EPA will have the primary responsibility for completion of this task.

##### Deliverables

Required deliverables are identified in Table 1.

### **TASK 3      PUBLIC OUTREACH ACTIVITIES**

This task includes activities to inform the public and interested stakeholders of project plans and activities and obtain stakeholder input. These activities may include, but not be limited to: newspaper ads, public meetings, other stakeholder meetings and events, and preparation of newsletters. The goal is to keep all stakeholders informed of the project plans, allow stakeholders to ask questions or express concerns, and garner support for the project.

The NFS and EPA will share primary responsibility for completion of this task.

#### Deliverables

No PA deliverables are anticipated as part of this Task.

### **TASK 4      LANDS, EASEMENTS, AND RIGHTS OF WAY**

This task includes activities to obtain any agreements for lands, easement, and rights of way that are required for implementation of construction activities. This will include written documentation of requirements, restrictions, and identification of areas available for use which will be provided to EPA.

The NFS is the lead entity for completion of this task, except that EPA is responsible for the acquisition of approval from the USACE to dispose of dredged sediments in the CDF.

The NFS is the lead to attempt to obtain Liability Waivers from property owners of Critical Structures where cleanup is planned, and any access agreements required for construction of the habitat restoration projects and/or the in situ sediment caps.

#### Deliverables

Required deliverables are identified in Table 1.

### **TASK 5      PERMITTING**

This task includes application and receipt of the following required permits for project implementation:

1. New York State/USACE Joint Permit
  - a. Excavation and Fill in Navigable Waters
  - b. 401 Water Quality Certification
  - c. Section 404 Clean Water Act
  - d. Section 10 Rivers and Harbors Act
  - e. Nationwide Permits 38 and 27
  - f. Coastal Consistency Concurrence

2. Buffalo Sewer Authority discharge permit for sediment processing water and an SPDES General Permit
3. NYSDEC RCRA for handling/transport of TSCA material

Copies of each permit obtained will be provided to EPA. Additional local permits will be obtained by EPA's RA construction contractor.

The NFS is the lead entity for completion of this task with technical support provided by EPA and its contractors.

#### Deliverables

Required deliverables are identified in Table 1.

### **TASK 6      REMEDIAL ACTION**

This task includes all activities required to implement the sediment dredging, the in situ sub-aqueous capping, and the habitat restoration components of the GLLA project. Actions are described more fully in the BODR documents listed in Section II (Note: riparian restoration and repair tasks identified in the BODR are excluded from this project agreement).

EPA is the lead entity for completion of this task.

Except as described below, the design documents describe the construction activities that are currently intended to take place during the remedial action phase of the project. However, there are activities described in the documents that will not be implemented. (e.g., riparian habitat restoration work). Additionally, other construction components are described in separate documents (e.g., CDF rehabilitation). For clarity, all major components of the construction activities to take place as part of the GLLA project are listed below. Work performed pursuant to the GLLA project will be governed by a Final Design acceptable to all signatory parties to this Project Agreement.

#### Sediment Remediation

The following sediment remediation and related activities will take place as part of the GLLA project unless otherwise provided for in the Final Design.

1. Non-TSCA Dredging. Removal and CDF disposal of the approximately 500,000 cubic yards of contaminated sediment identified in the BODR, Intermediate Design Document for Sediment Remediation.
2. TSCA Dredging. Removal of approximately 5,400 cubic yards of sediments with >50 ppm PCBs from DMU 8b, with offsite disposal in a TSCA licensed landfill.

3. Rehabilitation of the CDF dike walls. This activity will include rehabilitation of the armor stone along the CDF dike walls in lieu of the normal CDF tipping fee. This activity will be described in a separate design document currently being prepared by the U.S. Army Corps of Engineers. Total costs covered by this Project Agreement are not to exceed the total tipping fee charge (\$7.46 per cubic yard, totaling approximately \$3,750,000) that otherwise would have been levied for CDF disposal.
4. In Situ, Sub-Aqueous Capping of Contaminated Sediments. Approximately seven (7) acres of contaminated sediments at the head of the City Ship Canal will be capped as part of the remedial activities. Note: Safety of the public and workers is paramount to both EPA and the NFS. In order to ensure safety of workers and the public, additional capping activities may take place near critical structures, utility lines, etc. in lieu of the proposed dredging. Decisions regarding capping versus dredging in these areas will be made in conjunction with the PCT during final design.

#### Habitat Restoration

A total of five (5) habitat restoration projects will be constructed. These five projects (and estimated acreage of the in-water portion) are listed below and are described more fully in the "Basis of Design Report, Buffalo River Area of Concern, Intermediate Design for Habitat Restoration, Buffalo, New York", December 2011. However, the Final Design documents will ultimately cover the extent and type of restoration to be implemented.

1. Riverbend (approximately 1.1 acres)
2. City Ship Canal (approximately 3.76 acres)
3. Katherine Street (approximately 1.40 acres)
4. Ohio Street (approximately 0.08 acres)
5. Buffalo Color Peninsula (approximately 1.8 acres)

Total: approximately 8.14 acres

The habitat restoration BODR describes both aquatic and riparian restoration. Five of the aquatic habitat restoration components of these projects will be completed as part of the GLLA project. The riparian portion of the habitat restoration will not be completed under this Agreement.

#### Dredge Monitoring/Construction Monitoring

The EPA will be responsible for construction oversight and monitoring of these construction components. The dredge monitoring requirements are described more fully in the "Water Quality Monitoring Plan" and the "Operational Monitoring Plan" that will be included in the Final BODR.

#### Deliverables

Required deliverables are identified in Table 1.

## **TASK 7      CONSTRUCTION OVERSIGHT**

This task includes activities by EPA, the NFS, and its partners to oversee EPA's construction contractor(s) to ensure conformance of construction activities to required design elements and specifications. This includes regular site visits by EPA and NFS personnel and EPA contractors, analysis of confirmation sampling, and evaluation of sampling and construction monitoring results.

EPA will have primary responsibility for completion of this task. EPA efforts will be completed through their construction oversight contractor or the U.S. Army Corps of Engineers, with significant coordination with the NFS and NYSDEC.

### Deliverables

Required deliverables are identified in Table 1.

## **TASK 8      RECOVERY VERIFICATION MONITORING**

This task includes two (2), recovery verification monitoring surveys to be conducted two years and five years after the completion of sediment remediation activities in order to evaluate the recovery of the aquatic system and if there is any need for additional remedial activities. Additional remedial activities (if any are necessary) are covered by the Project Agreement and this SoW only if (i) they are within the Total Project Costs and the Non-Federal Share set forth in the Project Agreement and (ii) the Federal Share is available. These sampling activities and requirements are described more completely in supplemental documents, with sediment sampling detailed in both "Long-Term Monitoring of the Buffalo River Year 2 (March 26 Draft)" and "Long-Term Monitoring of the Buffalo River Year 5 (March 16 Draft)", and biological sampling detailed within "Buffalo River Proposed Habitat Construction Evaluation and Biological Sampling (Revised 03/01/12)"

The NFS will have primary responsibility for completion of this task and will coordinate with EPA regarding the need for and the lead entity for conducting any additional remedial activities.

### Deliverables

Required deliverables are identified in Table 1.

## **TASK 9      PROJECT CLOSEOUT**

This task includes activities required to close out the remedial action construction contract, summarize activities completed during construction, and close out the GLLA project agreement. The initial closeout activities will be an initial, "soft" closeout that will take place at the end of the sediment remediation and habitat restoration activities.

The “soft” closeout will include the development of remedial action reports, monitoring reports, cost documentation, and budget evaluations, including projections of future costs.

Anticipated reports during this initial closeout phase include:

1. Interim Remedial Action Report from EPA’s construction contractor.
2. Interim NFS GLLA report and cost accounting provided by each NFS.
3. Interim GLLA report and cost accounting provided by EPA.

At the completion of the Recovery Verification Monitoring at two years and five years post-dredging, the above reports will be updated to include any construction activities, sampling reports, data evaluations, and costs incurred by project participants.

Anticipated reports and updates during these final closeout procedures include:

1. Final Update Remedial Action Report from EPA’s construction contractor.
2. Final Update NFS GLLA report and cost accounting provided by each NFS.
3. Final Update GLLA report and cost accounting provided by EPA.

The NFS and EPA will share primary responsibility for completion of this task.

#### Deliverables

Required deliverables are identified in Table 1.

## **V. PROJECT BUDGET AND SCHEDULE**

Estimated project costs are provided below (including contingencies).

Sediment Remediation	37,800,000
Habitat Restoration	5,400,000

**TOTAL PROJECT COSTS \$ 43,200,000**

Anticipated schedule for completion of remedial action activities is provided below.

January to March 2013	Construction Contractor Given Notice to Proceed
May 2013	Mobilization
July 2013	Sediment Remediation Begins
June 2014	Habitat Restoration Begins
September 2014	Sediment Remediation Complete
October 2014	Habitat Restoration Complete
June 2015	Initial, “Soft” GLLA Project Closeout

September 2016	Recovery Verification Monitoring Plan Sampling (2-Year)
September 2019	Recovery Verification Monitoring Plan Sampling (5-Year)
June 2020	Final GLLA Project Closeout



**Table 1**  
**Summary of Major Submittals for the Remedial Design PA for**  
**Buffalo River AOC, New York**

<b>TASK</b>	<b>DELIVERABLE</b>	<b>LEAD</b>	<b>TENTATIVE DUE DATE/SCHEDULE</b>
1	RA Work Plan	EPA	90 Days after Completion of the Final Design Document
1	Progress and Budget Reports	EPA and NFS	As required in PA
2	Bid Summary Tables	EPA	10 Days after Receipt of Bids
2	Implementation Plan and Schedule	EPA	90 Days after Receipt of Bids
4	Agreements and Drawings for Lands, Easements, & Rights of Way	NFS	Q4 2012 to Q1 2013
5	Permits (copies supplied to EPA)	NFS	Q4 2012
6	Daily and Weekly Construction and Monitoring Reports	EPA	Daily and weekly during construction activities
6	Final As-Built Diagrams and Remedial Action Reports	EPA	90 days after completion of construction activities
7	Weekly construction oversight reports	EPA	Weekly during construction activities
7	Summary of monitoring and confirmation sampling data	EPA	Monthly during construction activities
7	Final oversight report with SWAC and volume calculations (for dredging) and figures	EPA	30 Days after completion of construction activities
8	Post-Dredging Field Sampling Plan and QAPP	NFS	540 Days after the completion of dredging
8	Post-Dredging, Recovery Sampling and Analysis Summary Report – Year 2	NFS	120 Days after the completion of sampling activities
9	Interim, Final Remedial Action Report	EPA	Q2 2015
9	Interim, Final Non-Federal Sponsor GLLA Report	NFS	Q2 2015
9	Interim GLLA Report and Accounting	EPA	Q2 2015
9	Post-Dredging, Recovery Sampling and Analysis Summary Report – Year 5	NFS	120 Days after the completion of sampling activities
9	Final Addendum to Remedial Action Report	EPA	Q3 2020

<b>Table 1</b> <b>Summary of Major Submittals for the Remedial Design PA for</b> <b>Buffalo River AOC, New York</b>			
<b>TASK</b>	<b>DELIVERABLE</b>	<b>LEAD</b>	<b>TENTATIVE DUE DATE/SCHEDULE</b>
9	Final Addendum to Non-Federal Sponsor GLLA Report	NFS	Q3 2020
9	Final GLLA Report and Accounting	EPA	Q3 2020